



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 5, 2019

Via electronic mail

[REDACTED]

Ms. Stacey Briney
City Clerk
City of Rushville
111 East Washington
Rushville, Illinois 62681

RE: OMA Request for Review – 2019 PAC 58390

Dear [REDACTED] and Ms. Briney:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the City of Rushville (City) City Council (Council) and the Council's Water Committee (Committee) violated the requirements of OMA in connection with a gathering of members of the Council and Committee at the City's water facilities on May 31, 2019.

BACKGROUND

On June 5, 2019, this office received a Request for Review from [REDACTED] [REDACTED] alleging that the Council and Committee met in violation of OMA on May 31, 2019. In particular, [REDACTED] stated that at the June 3, 2019, Council meeting, there was a discussion about members of the Committee attending a May 31, 2019, visit by Randy Dabney, a candidate for the position of water superintendent, to the City's water facilities. On July 15, 2019, this office sent a copy of the Request for Review to the City and requested that the Council and the Committee or their representative provide a written response to the allegations in the Request for Review. On July 29, 2019, the Public Access Bureau received the City's written answer. On July 30, 2019, this office forwarded a copy of the City's written response to [REDACTED]

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she replied on August 4, 2019. On August 22, 2019, this office requested that the City provide additional information concerning the content of the discussion during the gathering with Mr. Dabney at the water facilities. On August 27, 2019, provided this office with a copy of a recording of the June 3, 2019, meeting of the Council where the May 31, 2019, gathering was discussed. On August 28, 2019, the City provided a supplemental response.

DETERMINATION

It is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2018). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2018)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 (5 ILCS 120/1.02 (West 2018)) defines a "public meeting" as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

If a gathering of a majority of a quorum of public body members is determined to be a "meeting," then all the requirements of OMA apply, including proper posting of notice and an agenda (5 ILCS 120/2.02 (West 2018)), holding the meeting at a specified time and place that is convenient and open to the public (5 ILCS 120/2.01 (West 2018)), keeping minutes, and allowing public comment (5 ILCS 120/2.06(a), (g) (West 2018)).

OMA "is not intended to prohibit bona fide social gatherings of public officials, or truly political meetings at which party business is discussed. Rather, the Act is designed to prohibit secret deliberation and action on business which properly should be discussed in a public forum due to its potential impact on the public." *People ex rel. Difanis v. Barr*, 83 Ill. 2d 191, 202 (1980); see also *Nabhani v. Coglianese*, 552 F. Supp. 657, 660-61 (N.D. Ill. 1982):

A "meeting" under the Act, has been variously described as a gathering "designed to discuss or reach an accord with regard to public business,"[citation], or as "collective discussion...and exchange of facts preliminary to the ultimate decision." [Citation] Third New International Dictionary (1976) defines "deliberate" as follows: "to ponder or think about with measured careful consideration and often with formal discussion before reaching a decision or conclusion."

In her Request for Review, [REDACTED] stated that the mayor acknowledged at a Council meeting that members of the Committee were present when Mr. Dabney visited the water facilities. According to [REDACTED] at the June 3, 2019, Council meeting, a member of the Council alleged that the Committee and the Council had violated OMA by gathering with Mr. Dabney. In its answer to this office, the City stated that three of the four members of the Committee, who are also aldermen on the eight-member Council, were present along with the mayor at the City's water facilities on May 31, 2019. The City initially stated to this office that the members and the mayor were gathered to get to know Mr. Dabney, who was inspecting the water facilities because he was a candidate for the water superintendent position. The City asserted that no business was conducted and no actions were taken during the gathering. The City further stated that "[a]ll parties deny that there was a meeting to discuss City business, [and that the gathering was] merely to become acquainted with the applicant Dabney and review the facility."¹

In her reply [REDACTED] stated that she disagreed with the City's answer. She also provided a copy of the recording of the June 3, 2019, meeting that she had referred to in her Request for Review, which this office reviewed. In the recording of the June 3, 2019, open meeting, the mayor admitted that the May 31, 2019, gathering violated OMA but did not elaborate on the discussion between Mr. Dabney and the members of the Council and Committee. In its supplemental response to this office, the City stated that the members present met with Mr. Dabney "and then went to each facility to discuss how the [C]ity's water plant worked."² Despite the City's initial assertion that the gathering was to get merely to get acquainted with Mr. Dabney, in its supplemental response, the City described Mr. Dabney as "the new water operator" and stated that "[a]t the time of the meeting, the City Council had

¹Letter from Stacey Briney, City Clerk, City of Rushville, to Assistant Attorney General Matt Hartman, [Public Access Bureau], [Office of the Attorney General] (Undated).

²Letter from Stacey L. Briney, City Clerk/CMC, City of Rushville, to Assistant Attorney General Matt Hartman (August 28, 2019).

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already approved a contract with Mr. Dabney at a cost of One Thousand Dollars (\$1,000) per month."³ The City further stated that it has been making "major improvements" to its water system and that those improvements were "touched on" during the gathering with Mr. Dabney.⁴


The Attorney General has noted that "[d]eliberation *** connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision." Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 125 (quoting *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 47-48, 69 Cal. Rptr. 480, 485 (Cal. Ct. App. 1968)). In the same opinion, the Attorney General also quoted *Sacramento Newspaper Guild* for the proposition that,

[t]here is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the *collective inquiry* and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. (Emphasis added.) Ill. Att'y Gen. Op. No. S-726, at 125 (quoting *Sacramento Newspaper Guild*, 263 Cal. App. 2d at 50, 69 Cal. Rptr. at 487).

Although the City's responses to this office about the content of the discussions that took place during the gathering lacked detail, it is undisputed that a majority of a quorum of the members of the Council and Committee were present and that issues concerning the improvements to the water system were "touched on" during the gathering. The City's response to this office stated that no final action was taken during the gathering, however, as previously noted, section 1 of OMA provides that the public shall be given advance notice and the opportunity to attend a meeting where public business "is discussed or acted upon in any way." Further, when confronted by another Council member about concerns with compliance with OMA at the gathering, the mayor admitted the non-public gathering was a violation of OMA. Based on the available information, the purpose of the gathering was to review the City's water facilities and discuss improvements to the City's water system with an individual who was contracted by the City to serve as its water operator. Such information appears to be preliminary to the City's ongoing decisions concerning the operation of and improvements to the water system. Therefore, the May 31, 2019, gathering constituted a "meeting" subject to the requirements of OMA.

³Letter from Stacey L. Briney, City Clerk/CMC, City of Rushville, to Assistant Attorney General Matt Hartman (August 28, 2019).


⁴Letter from Stacey L. Briney, City Clerk/CMC, City of Rushville, to Assistant Attorney General Matt Hartman (August 28, 2019).


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Accordingly, based on the available information, this office concludes that, in connection with its May 31, 2019, gathering, the Council and Committee violated: (1) section 2.02 of OMA by holding the meeting without proper posting of notice and an agenda; (2) section 2.01 of OMA by failing to hold the meeting at a specified time and place that was open to the public; (3) section 2.06(a) of OMA by failing to keep minutes of the meeting; and (4) section 2.06(g) of OMA by failing to provide an opportunity for public comment. Because the Council and the Committee did not vote upon items of final action at the meeting, there is no remedial action available, but this office cautions the Council and the Committee to comply with the requirements of OMA when gathering to deliberate on matters of public business.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (217) 782-9054, mhartman@atg.state.il.us, or the Springfield address on the first page of this letter. This letter serves to close this file.

Very truly yours,


MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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